

Article 7 Revisions: Updated February 1, 2010

Full updated version can be found at: <http://www.doe.in.gov/exceptional/speced/laws.html>

Updated sections italicized:

511 IAC 7-32-92 "Student with a disability" defined

Sec. 92. (a) "Student with a disability" means a student who has been evaluated in accordance with this article and determined eligible for special education and related services by a CCC.

(b) If, after an appropriate educational evaluation, it is determined that a student has one (1) of the disabilities identified in 511 IAC 7-41, and the CCC determines that the student needs a related service, but not special education, the student is not a student with a disability.

(c) If a parent revokes consent for special education and related services in accordance with 511 IAC 7-42-15, the student is no longer a student with a disability.

511 IAC 7-40-3 Educational evaluations; in general

(g) The public agency must evaluate a student with a disability in accordance with the requirements of this rule and 511 IAC 7-41 before a CCC can determine that the student is no longer a student with a disability, except when termination of the student's eligibility is due to:

(1) graduation with a high school diploma as defined in 511 IAC 6-7.1-1(e); or

(2) exceeding the age eligibility under this article; or

(3) a parent's revocation of consent for special education and related services in accordance with 511 IAC 7-42-15.

511 IAC 7-40-4 Initial educational evaluation; public agency written notice and parental consent

Sec. 4. (a) Either a parent of a student or a public agency may initiate a request for an educational evaluation to determine if a student is eligible for special education and related services under this article.

If a parent makes a request for an evaluation after revoking consent for special education and related services in accordance with 511 IAC 7-42-15, the public agency must treat the parent's request for evaluation as a request for an initial evaluation, and the evaluation must be conducted in accordance with this section.

511 IAC 7-42-8 Individualized education programs; implementation; termination due to revocation of consent

Sec. 8. (a) *The services identified in an IEP must be provided as soon as the necessary arrangements are completed, but not later than the following:*

(1) Ten (10) instructional days after parental consent to the student's initial IEP is received.

(2) Ten (10) instructional days after a public agency provides written notice described in section 7 of this rule regarding a student's proposed IEP. However, the public agency must continue to implement the current IEP if the parent challenges the proposed IEP by:

(A) requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency;

(B) initiating mediation under 511 IAC 7-45-2; or

(C) requesting a due process hearing under 511 IAC 7-45-3.

(h) If a parent revokes consent for special education and related services in accordance with section 15 of this rule, the public agency must terminate the implementation of a student's IEP on the eleventh instructional day after the public agency provides the parent with the written notice required by section 15(b) of this rule, unless the parent consents in writing that the services will be terminated prior to the eleventh day.

511 IAC 7-42-15 Revocation of consent for special education and related services

Sec. 15. (a) At any time after the parent gives consent for the initiation of special education and related services, the parent may revoke that consent by doing the following:

(1) Putting the revocation of consent in writing.

(2) Signing the revocation.

(3) Submitting the written revocation to licensed personnel.

(b) Within ten (10) instructional days of the date licensed personnel receive the parent's written revocation, the public agency must provide the parent with a copy of the written notice described in section 7 of this rule.

(c) The public agency is not required to convene a CCC or develop an IEP when the public agency receives the parent's written revocation.

(d) The public agency may ask the parent why the parent is revoking consent, but the public agency may not require the parent to provide an explanation, either orally or in writing, as a condition of terminating the provision of special education and related services. The public agency may not use the inquiry to delay or deny the termination of special education and related services.

(e) A parent's revocation of consent covers all instruction, services, and supports included in the student's IEP, including, but not limited to, the following:

(1) Specialized instruction.

(2) Related services.

(3) Accommodations.

(4) Adaptations.

(5) Modifications.

(6) Supports for the student or personnel on behalf of the student.

(7) Assistive technology devices and services.

(8) Placement outside of a general education classroom.

(f) A parent may not revoke consent for fewer than all of the special education and related services included in the student's IEP.

(g) The public agency may not terminate special education and related services until ten (10) instructional days after the parent receives the written notice described in subsection (b) unless the parent provides written consent for services to be terminated prior to the expiration of ten (10) instructional days after receipt of the written notice.

(h) The public agency may not use mediation or a due process hearing to override the parent's revocation of consent for services.

(i) Upon revocation of consent and termination of special education and related services, the student is no longer eligible as a student with a disability and is not entitled to the protections of this article, except as permitted in 511 IAC 7-44-9.

(j) The public agency is not required to amend the student's educational records to remove any reference to the student's special education and related services when the parent revokes consent for services. This does not preclude a parent from requesting that the student's educational record be amended in accordance with the procedures contained in 511 IAC 7-38-2.

(k) The public agency shall not be considered to be in violation of the requirement to make a free appropriate public education available to the student when the public agency terminates the special education and related services to the student subsequent to the parent's revocation of consent in accordance with this section.

(l) If, after revoking consent, a parent wants the student to receive special education and related services, the parent must request an initial evaluation in accordance with 511 IAC 7-40-4 and the CCC must determine, in accordance with 511 IAC 7-40-6, if the student is eligible for special education and related services as a student with a disability as defined in 511 IAC 7-32-92.

511 IAC 7-44-9 Protections for students not yet eligible for special education and related services

(c) A public agency shall not be deemed to have knowledge under subsection (b) if any of the following has occurred:

(1) The parent of the student has not allowed an evaluation of the student under 511 IAC 7-40.

(2) The parent of the student has refused services under this article or the Individuals with Disabilities Education Act.

(3) The public agency:

(A) conducted an educational evaluation;

(B) determined that the student was not a student with a disability under this article; and

(C) provided notice to the student's parents of the determination consistent with 511 IAC 7-42-7.

(4) *The parent of the student has revoked consent for special education and related services in accordance with 511 IAC 7-42-15.*

511 IAC 7-45-7 Conducting the hearing

(d) Any party to a due process hearing has the right to the following:

(1) Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to special education or the problems of students with disabilities.

(2) *Be represented by an individual who is not an attorney as permitted by IC 4-21.5-3-15(b).*

(3) *Present evidence and:*

(A) *confront;*

(B) *cross-examine; and*

(C) *compel the attendance of; witnesses.*

(4) *Conduct discovery in accordance with IC 4-21.5-3, Indiana Rules of Trial Procedure, and this section.*

(5) *Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days prior to the hearing.*

(6) *A separation of witnesses who are not parties to the dispute.*

(7) *Obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing.*

(8) *Obtain written or, at the option of the parents, electronic findings of facts and decision.*

(9) *Be provided with an interpreter, if any party to the hearing has a hearing or speaking impairment or other difficulty in communicating, or whose native language is not English.*